



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

February 10, 2006
AO-06-02

Daniel Melnechuk, Treasurer
Green-Rainbow Party
P.O. Box 440353
Somerville, MA 02144-0004

Re: PAC supporting slate of candidates

Dear Mr. Melnechuk:

This letter is in response to your request for an opinion seeking guidance regarding the extent to which the Green-Rainbow Party (the committee) may support a slate of Green-Rainbow Party candidates.

1. GENERAL DISCUSSION

The Green-Rainbow Party is currently registered as a political action committee with OCPF. Prior to the 2004 state election, the committee was registered as a political party committee, but currently the committee is not a “political party” under M.G.L. c. 50, § 1, but is instead a “political designation” under that statute.¹ Since it is not a Massachusetts political party committee, by definition, it must be considered a political action committee. *See* M.G.L. c. 55, § 1 and enclosed letter from OCPF dated February 15, 2005, regarding the status of the committee as a PAC. The committee occupies a unique status in that in some election cycles it may be a political party committee, but in others, it is a political action committee. Therefore, the rules on how the committee may raise and spend money vary depending on whether the committee is a political action committee or a political party committee.

Like the Massachusetts Republican and Democratic Party committees, however, the committee maintains not only a state account, but also a federal account that is governed by federal law. The federal account is used to raise and spend funds to support or oppose federal candidates. Federal law defines “federal election activity” to include, in part, any campaign

¹ A “political party” is defined as “a party which at the preceding biennial state election polled for any office to be filled by all the voters of the Commonwealth at least three percent of the entire vote cast in the Commonwealth for such office,” or which has enrolled at least one percent of registered voters in the Commonwealth. *See* M.G.L. c. 50, § 1.

activity “in connection with an election in which a candidate for federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot...).” *See* 2 U.S.C. 431(20). This broad definition requires that expenditures relating to a federal candidate be made from the federal account of the committee, even if the expenditures support or oppose not only a federal candidate on the party’s slate, but also state or local candidates on the slate. *See* 11 CFR 100.24 and 11 CFR 106.7. Therefore, it is our understanding that the federal account must be used for expenditures that have the purpose of supporting not only federal candidates, but also for communications that mention a federal candidate along with a state and local candidate. Such expenditures, if made in consultation or coordination with state or local candidates, would have to be disclosed by the candidates receiving them, as in-kind contributions.

In contrast, if the committee makes an expenditure solely to support or oppose a state or local candidate, state law and regulation requires the expenditure to be made from the state account of the committee. *See* 970 CMR 2.16(2), which states, in essence, that expenditures made by a committee to support or oppose state or local candidates must be made from the state account of the committee unless federal law preempts state law.

Because the committee is currently registered as a Massachusetts political action committee, however, it is also subject to a number of requirements imposed on such committees by the Massachusetts campaign finance law. The following requirements apply, however, only when the committee receives contributions or makes expenditures solely for the purpose of influencing state or local campaigns, i.e., when the contributions are deposited into or expenditures are made from the committee’s state account, or when the committee makes, raises or spends funds from its state account.

First, as a PAC, the committee may contribute no more than \$500 during a calendar year to any one Massachusetts candidate or a candidate’s committee (for both monetary and in-kind contributions, combined). *See* M.G.L. c. 55, § 6. Therefore, each state or local candidate that is being supported by the committee’s state account should organize his or her own political committee. In this manner, each candidate will be able to receive \$500 from the committee, and additional contributions from persons who contribute directly to the candidate’s committee.

Second, as a PAC, the committee is subject to the “bundling” provisions of Section 10A of the campaign finance law when it gathers and delivers contributions to state or local candidates. *See* AO-02-22 and AO-96-10 (stating that Section 10A does not apply to federal PACs). If a person were to give a contribution to the committee in the form of a check made payable to one of the state or local candidates on the committee’s “slate,” and the committee were to then gather and deliver these contributions to the candidate, such activity would be subject to Section 10A. This section states, in part, that when a PAC, or an officer, employee or other agent of the PAC, is an intermediary or conduit of contributions to candidates *that each exceed \$140*, the contributions which are gathered and delivered to a candidate or candidate’s committee must be considered not only a contribution from the original source, but also from the intermediary. Therefore, the committee should ensure that such contributions over \$140 it receives are made payable to the Green-Rainbow Party (either the federal or state account), and not to a particular candidate, and that such contribution checks received by the committee are deposited into one of the committee’s accounts, and not directly endorsed to a particular state or local candidate.

Finally, political action committees may not jointly raise funds or make expenditures with candidate committees. *See* 970 CMR 2.11 (which authorizes other committees to make joint campaign expenditures for goods and services such as bumper stickers, signs and buttons, political advertisements and campaign literature) and 970 CMR 2.12 (which authorizes joint fundraising events by other types of committees). Therefore, the committee may not pool funds from its state account with funds provided from candidates' committees to distribute campaign materials or use its state account to make expenditures or receive funds in connection with a joint fundraising event. The committee may, however, use its state account to support or oppose a slate of candidates, and may ask contributors to send contributions directly to the candidates' committees.

2. QUESTIONS

QUESTION 1: Can a slate of candidates share one campaign treasurer?

ANSWER: Yes. Nothing in the campaign finance law would prohibit this. The political committees organized on behalf of candidates may share one treasurer. *See* M.G.L. c. 55, § 5, defining the obligations of committee treasurers.

QUESTION 2: Can a slate of candidates file with OCPF with one campaign account?

ANSWER: No. Each candidate who raises and spends funds must have a separate account. *See* M.G.L. c. 55, § 2, which states that candidates must keep accounts "separate and distinct from all other accounts." Candidates for statewide office must also appoint and open a depository for campaign funds in accordance with Section 19 if they plan to raise or spend money.

QUESTION 3: If items 1 or 2 are allowed, what issues would arise by having a U.S. Senator on the slate?

ANSWER: As discussed above, OCPF may not regulate campaign finance activity undertaken in part to support or oppose a candidate for federal office. It is our understanding that the federal election campaign laws would likely preempt the Massachusetts campaign finance law where an expenditure mentions a clearly identifiable federal candidate. Therefore, such expenditures must be made out of your federal account.

QUESTION 4: If Item 2 is allowed, what type of organization would the slate be required to file as?

ANSWER: N/A

QUESTION 5: Since a candidate running with her own campaign account is allowed to accept up to \$500 per year from an individual, would a "slate organization" be allowed to accept the maximum per person-year donation? If not, then what would the maximum allowed contribution per person per year be?

ANSWER: The campaign finance law does not envision "slate organizations." An individual may, however, contribute up to (1) \$500 to a candidate's committee, (2) \$500 to the Green-Rainbow state account, and (3) the amount stated in federal law as the limit applicable to contributions made to the committee's federal account.

QUESTION 6: Would the slate be able to qualify under the public campaign funding system available for the 2006 election?

ANSWER: Individual candidates for statewide office may be entitled to public funding (if funding is available) if they agree to spending limits, raise the minimum number of qualifying contributions, and comply with the requirements of the statute and regulations relating to such receipt. See M.G.L. c. 55C. There is no provision in c. 55C for slates as you have described.

QUESTION 7: Would there be any limits on the types or amounts of expenditures that said organization could carry out?

ANSWER: N/A – Such organizations are not contemplated.

QUESTION 8: How would said organization have to identify itself on campaign materials?

ANSWER: N/A- Such organizations are not contemplated. As far as disclosure by the committee, attribution requirements relating to political advertisements and circulars or posters are found in M.G.L. c. 56, §§ 39 and 41. You should contact the Secretary of the Commonwealth's Elections Division at (617) 727-2828 for guidance regarding these provisions.

QUESTION 9: If one candidate is listed on campaign materials, would all candidates need to be listed and how equally would they need to be listed?

ANSWER: N/A

QUESTION 10: Can the slate have campaign materials that do not list any candidates but have some other identifier such as: "Vote Green-Rainbow Commonwealth Slate" or even "Vote Green-Rainbow Party?"

ANSWER: N/A

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and your conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", is written over a horizontal line.

Michael J. Sullivan
Director

Enclosure
MJS/gb